IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4923 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOGANBHAI NATHABHAI - Petitioner(s)
Versus
GUJARAT ELECTRICITY BOARD & 2 - Respondent(s)

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Appearance :

MR RR TRIVEDI for Petitioner(s) : 1,MR BHAVESH P TRIVEDI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 2,
MS LILU K BHAYA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/04/2007

ORAL JUDGMENT

1. Heard learned advocate Shri M.P. Dave for Shri R.R. Trivedi for the petitioner and learned

advocate Ms. Fareena Hawa for Ms. Lilu K. Bhaya for the respondents.

2. In this petition, the petitioner has challenged an order dated 16th December, 2005 passed by the Principal Senior Civil Judge, Gondal in Civil Misc. Application No.12/2005.

3. The petitioner herein is plaintiff no.2 in the civil suit filed by him against the present respondents. The plaintiff no.1 has died during the pendency of the proceedings before the civil Court. The plaintiffs have lodged a claim for compensation against the respondents for death of one Haribhai Nathabhai. The proceedings came to be dismissed for want of prosecution. The petitioner sought restoration thereof and also prayed for condonation of delay in filing the restoration application in his Civil Misc. Application 12/2005. This application however, came to be rejected by impugned order dated 16th December, 2005.

4. Having heard learned advocates appearing for the parties, I find that the petitioner deserves one more opportunity. It is true that as observed by learned Judge, the petitioner had not filed affidavit of the concerned advocate, that itself should not be sufficient ground for rejecting his restoration application. The petitioner has contended before the Civil Court that he was not

aware about the proceedings being dismissed and that his advocate has not communicated the same to him. It is stated before the Court that the petitioner has since then changed the advocate. Learned advocate Shri Dave assured this Court that the petitioner would be more vigilant in future.

5. In the result, impugned order dated 16th December, 2005 is quashed. Civil Misc. Application No.12/2005 filed by the petitioner is allowed. His original application for forma pauper being Civil Misc. Application No. 1/2000 which was dismissed for default is restored to file. The petition is disposed of accordingly. Rule made absolute. No order as to costs.

(Akil Kureshi,J.)

(raghu)